MOHAMAD ROSLAN MARJO v. PP & OTHER APPLICATIONS

HIGH COURT SABAH & SARAWAK, KUCHING
AZHAHARI KAMAL RAMLI J
[CRIMINAL APPLICATIONS NO: KCH-44-9-11-2018, KCH-46SOM-1-11-2018 & KCH-46SOM-12-11-2018]
21 DECEMBER 2018

CRIMINAL LAW: *Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 – Section 26E – Whether security offence – Whether charges fell within ambit of preamble (1), (2), (3) and (4) of Security Offences (Special Measures) Act 2012 ('SOSMA') – Exclusion of paras (c) and (d) of art. 149(1)(e) of Federal Constitution in preamble to SOSMA – Whether offence not intended to be categorised as security offence – Whether charges fell within scope of art. 149(1)(e) of Federal Constitution – Whether charges void and/or unconstitutional – Whether charges ought to be tried in Sessions Court – Whether accused ought to be released on bail*

JURISDICTION: *Courts – High Court – Charge under s. 26E of Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 ('ATIPSOM') – Whether security offence – Whether charges fell within ambit of preamble (1), (2), (3) and (4) of Security Offences (Special Measures) Act 2012 ('SOSMA') – Exclusion of paras. (c) and (d) of art. 149(1)(e) of Federal Constitution in preamble to SOSMA – Whether offence not intended to be categorised as security offence – Whether charges fell within scope of art. 149(1)(e) of Federal Constitution – Whether charges void and/or unconstitutional – Whether charges ought to be tried in Sessions Court*

There were 12 charges preferred against the accused, all under s. 26E of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 ('ATIPSOM'), where the accused was charged for making fraudulent travel documents *ie*, Malaysian passport for the purpose of facilitating an act of smuggling of migrant. By an originating motion, the accused moved the court to refer to the Federal Court the following important questions of constitutional law that ought to be determined and which could and ought to be dealt with in accordance with ss. 84 and 85 read with s. 30(1), (2) and (3) of the Courts of Judicature Act 1964 ('CJA'): (i) whether the 12 charges preferred against the accused fell within the ambit of Preamble (1), (2), (3) and (4) of the Security Offences (Special Measures) Act 2012 ('SOSMA') or whether they fell within the scope of art. 149(1)(e) of the Federal Constitution ('FC'); (ii) whether ss. 13 and 30 of SOSMA that seek to remove from the courts an exercise of judicial power and discretion to grant bail to the accused and vest the same in the hands of PP was contrary to the provisions of art. 121 read with arts. 4, 5, 8 and 9 of the FC is void and/or unconstitutional; and (iii) whether the 12 charges preferred against the

accused was bad in law and does not come within s. 26E of the ATIPSOM. The crux of the matter was whether the offence under s. 26E of the ATIPSOM was a security offence.

Held (striking out all charges in High Court; accused discharged not amounting to acquittal):

(1) Under s. 30 of the CJA, the High Court, at the request of the subordinate court, is empowered to determine any question that arose as to the effect of any provision of the Constitution and to act in accordance with s. 84 as if it was a case before him in the jurisdiction of the High Court which the question arose. However, ss. 30 and 84 of the CJA must be read together with art. 128(1)(a) and (b) which spells out the original jurisdiction of the Federal Court in determining any question regarding any provision of the FC. The High Court is empowered to hear and decide any constitutional issues raised before it, other than those that fall under art. 128(1)(a) and (b). Further, the accused was challenging the constitutionality of ss. 13 and 30 of the SOSMA and not the power of Parliament to legislate SOSMA. Hence, the present application was within the power/jurisdiction of this court. (paras 4-6)

(2) SOSMA was piece of legislation which was promulgated under art. 149 of the FC. It was obvious that in the preamble, its drafters had found it necessary to recite paras. (a), (b), (e) and (f) of art. 149(1). Obviously missing were paras. (c) and (d). These paragraphs had been expressly excluded in the recital of SOSMA which necessarily meant that the offence was not intended to be categorised as security offence. (paras 11 & 22)

(3) Section 12 of SOSMA provides that all security offences shall be tried by the High Court, whereas, s. 3 defines 'security offences' as offences specified in the First Schedule. The First Schedule lists the security offences as offences under Chapter VI, VIA and VIB of the Penal Code and the offences under Part IIIA of the ATIPSOM and the Special Measures against Terrorism in Foreign Country Act 2015. Section 26E of the ATIPSOM fells under Part IIIA of the Act. The offending section of the ATIPSOM, which was the subject matter of this application, was s. 13, whereby bail should not be granted to a person who has been charged with a security offence except in cases provided in sub-s. 2 and s. 30 with regard to detention pending exhaustion of legal process. Sections 13 and 30, on the face of it, was obviously inconsistent with art. 5 of the FC. (paras 12 & 13)

(4) Notwithstanding the fact that offences under Part IIIA of ATIPSOM, under which s. 26E was enacted, has been listed as security offence under the First Schedule of SOSMA, it does not provide a blanket

provision approval/categorically that all offences thereunder must be treated/considered/defined as security offence under the said Act. It is open to the defence to challenge whether any particular offence under the particular section under the First Schedule qualified to be considered as security offence or the purpose of a trial under SOSMA. At the same time, it was incumbent upon the court to determine whether that particular offence fell under the ambit of the SOSMA. (para 16)

(5) The definition of 'smuggling of migrant' under s. 2 of the ATIPSOM involved an element of 'unlawful entry' into or through or unlawful exit from any country of which the person was not a citizen or permanent resident. Issuance of the passport to Malaysian citizen could not tantamount a threat to public order. Having been issued a travel document, *albeit* fraudulently, will not make a Malaysian citizen a smuggled migrant under the ATIPSOM. The offence purportedly committed by the accused under s. 26E was an act prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the federation or any part thereof *ie*, which fell under art. 149(1)(e) of the FC. Hence, the 12 charges preferred against the accused fell within the scope of art. 149(1)(e) of the FC and should not be treated as security offence. (paras 21 & 22)

(6) Consequently, the charges against the accused should be tried in the Sessions Court and the accused had the right to be released on bail. The bail application was to be dealt with by the Sessions Court. All the charges in the High Court were struck out and the accused was discharged not amounting to acquittal. (para 23)

(7) The definition of security cases under s. 3 of the SOSMA and its First Schedule covers a variety of offences under Chapter VI, VIA and VIB of the Penal Code as well as under Part IIIA of the ATIPSOM and the Special Measures against Terrorism in Foreign Country Act 2015. Article 149(1) empowers the Legislature to enact law for the purpose specified under art. 149(1)(a) to (f) notwithstanding that it is inconsistent with arts. 5, 9, 10 and 13 of the FC. As such, if any of the other offences listed under the First Schedule fall under any of the recital of SOSMA, then such offences shall be considered as security offences and s. 13 thereof should apply to the accused. Since the notice of motion made specific reference to the offence under s. 26E, it would be inappropriate for the court to make a general ruling on the constitutionality of ss. 13 and 30 of the SOSMA without making any reference to the individual offence provided therein. Hence, the court refrained from making any ruling on the constitutionality of the sections. (para 24)

Case(s) referred to:

PP v. Khairuddin Abu Hassan & Anor [2017] 4 CLJ 701 CA ***(foll)***

Re Application Of Tan Boon Liat; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors [1976] 1 LNS 126 HC ***(refd)***

Legislation referred to:

Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, ss. 2, 26E

Courts of Judicature Act 1964, ss. 30(1), (2), (3), 84, 85

Federal Constitution, arts. 4, 5, 8, 9, 10, 13, 121, 128(1)(a), (b), (c), 149(1)(a), (b), (d), (e), (f)

Penal Code, s. 124L

Security Offences (Special Measures) Act 2012, ss. 3, 12, 13(3), 30, First Schedule

For the applicant - Shankar Ram Pohumall Asnani & Daniel Ling; M/s Thomas, Shankar Ram & Co Advocs

For the respondent - Nurul Asyikin Rosli & Fazri Sani Mohamed Fadzril; DPP

Reported by S Barathi

JUDGMENT

Azhahari Kamal Ramli J:

[1] There are 12 charges preferred against the accused, all under s. 26E of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM).

[2] The 12 charges are similar in that the accused was charged for making fraudulent travel documents ie, Malaysian passport to the following persons:

(i) Liong Chee Xing [PP A41052525]

(ii) Hayati binti Abd Mutalib [PP A41200181]

(iii) Teoh Han Koong [PP A41200774]

(iv) Loh Tai Fei [PP A41200783]

(v) Ang Chin Liang [PP A41200796]

(vi) Lew Mei Yan [PP A41209990]

(vii) Yow Hui Soo [PP A41415012]

(viii) Choong Jin Yong [PP A41421822]

(ix) Loo Lee Chong [PP A41424882]

(x) Lim Weng Heng [PP A40530024]

(xi) Jenny Loh Siew Teng [PP A40530023]

(xii) Yeo Chee Chuan [PP A40531445]

for the purpose of facilitating an act of smuggling of migrant.

[3] By a notice of originating motion dated 12 November 2018, the accused moved this court to refer to the Federal Court important questions of constitutional law that ought to be determined and which can and ought to be dealt with in accordance with ss. 84 and 85 read with ss. 30(1), (2) & (3) of the Courts of Judicature Act 1964. Among others, the constitutional questions posed are as follows:

(i) Whether the 12 charges preferred against the accused Mohamad Roslan bin Marjo come within the ambit of Preambles (1), (2), (3) and (4) of the Security Offences (Special Measures) Act 2012 [SOSMA 2012] or whether they come within the scope of art. 149(1)(e) of the Federal Constitution;

(ii) Whether ss. 13 and 30 of SOSMA 2012 that seek to remove from the courts an exercise of judicial power and discretion to grant bail to the accused and vest the same in the hands of PP is contrary to the provisions of art. 121 read with arts. 4, 5, 8 and 9 of Federal Constitution is void and/or unconstitutional;

(iii) Whether the 12 charges preferred against the accused is bad in law and does not come within s. 26E of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007.

[4] At the outset, it must be noted that under s. 30 of the Courts of Judicature Act 1964, the High Court at the request of the subordinate court is empowered to determine any question arises as to the effect of any provision of the Constitution, and to act in accordance with s. 84 as if it were a case before him in the jurisdiction of the High Court which the question arises.

[5] However, ss. 30 and 84 must be read together with art. 128(1)(a) and (b) which spells out the original jurisdiction of the Federal Court in determining any question regarding any provision of the Constitution.

[6] In my opinion, the High Court is empowered to hear and decide any constitutional issues raised before it, other than those fall under art. 128(1)(a) and (b). Further, learned counsel for the accused at the outset of the hearing of this application has indicated that they are challenging the constitutionality of ss. 13 and 30 of the SOSMA and not the power of the Parliament to legislate SOSMA. Hence, the present application is within the power/jurisdiction of this court.

[7] As I have stated, the accused faces 12 charges under s. 26E of ATIPSOM. He was first charged before the Sessions Court and thereafter the charges were transmitted to the High Court. This is due to the fact that the prosecution has invoked the provision of SOSMA to have those cases tried in the High Court.

[8] SOSMA was a piece of legislation which was promulgated under art. 149 of the Federal Constitution. Article 149 empowers Parliament to enact any law against subversion, organised violence and acts and criminal prejudicial to the public and emergency order notwithstanding such law may be inconsistent with arts. 5, 9, 10 and 13 that govern the fundamental liberties of the citizen. Article 149 reads:

> (1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation
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> (a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or
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> (b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or
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> (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or
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> (d) to procure the alteration, otherwise than by lawful means, of anything by law established; or
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> (e) which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof; or
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> (f) which is prejudicial to public order in, or the security of, the Federation or any part thereof,
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> any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of arts. 5, 9, 10 or 13, or would apart from this article be outside the legislative power of Parliament; and art. 79 shall not apply to a Bill for such an Act or any amendment to such a Bill.
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> (2) A law containing such a recital as is mentioned in cl. 8(1) shall, if not sooner repealed, ceased to have effect if resolutions are passed by both Houses of Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under this article.

[9] It is obvious that art. 149 is the enabling provision for the promulgation of any law for the purposes of combating subversion, organised crime and the like even if such law have the effect of curtailing any of the fundamental liberties of the citizen under arts. 5, 9, 10 or 13. However, that law is subjected to the condition that the recital of such law must state any of the acts as listed in cl. 1(a)-(f).

[10] SOSMA was enacted by Parliament on 31 July 2012. In its preamble, it was stated as such:

> An Act to provide for special measures relating to security offences for the purpose of maintaining public order and security and for connected matters.
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> WHEREAS action has been taken and further action is threatened by a substantial body of persons both inside and outside Malaysia:
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> (1) to cause, or to cause a substantial number of citizens to fear, organized violence against persons or property;
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> (2) to excite disaffection against the Yang di-Pertuan Agong;
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> (3) which is prejudicial to public order in, or the security of the Federation or any part thereof; or
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> (4) to procure the alteration, otherwise than by lawful means, of anything by law established.
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> AND WHEREAS Parliament consider if necessary to stop such action;
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> NOW, THEREFORE, pursuant to Article 149 of the Federal Constitution, IT IS ENACTED by Parliament of Malaysia as follows:

[11] Hence, SOSMA was enacted pursuant to art. 149 of the Federal Constitution. It is obvious that in the preamble, its drafters had found it necessary to recite paras. (a), (b), (e) and (f) of art. 149(1). Obviously missing are paras. (c) and (d).

[12] Section 12 of SOSMA provides that all security offences shall be tried by the High Court whereas s. 3 defines "Security offences" as offences specified in the First Schedule.

The First Schedule lists the security offences as offences under Chapter VI, VIA and VIB of Penal Code and offences under Part IIIA of ATIPSOM 2007 and Special Measures against Terrorism in Foreign Countries Act 2015. Section 26E of ATIPSOM falls under Part IIIA of the Act.

[13] The offending section of SOSMA, which become the subject matter of this application is s. 13 whereby bail should not be granted to a person who has been charged with a security offence except in cases provided in sub-s. 2 and s. 30 with regard to detention pending exhaustion of legal process ss. 13 and 30, on the face of it, is obviously inconsistent with art. 5 of the Federal Constitution.

[14] Learned counsel for the accused, in his usual candour submitted that SOSMA is applicable to activities of terrorism, hence the offence under which the accused is charged of namely fraudulently making travel document for the purpose of facilitating an act of smuggling of migrant is obviously not

an act of terrorism warranting it to be treated as security offence. Making a forceful submission, it was urged upon this court to rule that the offence should be tried as a normal criminal offence in the Sessions Court.

[15] Hence, the crux of the matter before this court is whether the offence under s. 26E of ATIPSOM is a security offence. In this respect, the case of *PP v. Khairuddin Abu Hassan & Anor* [2017] 4 CLJ 701 cited by learned counsel for the accused is very much in point. In that case, the accused was charged for attempting to commit sabotage of the banking and financial services of this country, an offence under s. 124L of the Penal Code. They filed a notice of motion seeking order, *inter alia*, that the charge under s. 124L of the Penal Code falls outside the ambit of SOSMA. In the High Court it was decided that s. 124L was not a security offence falling within the purview and ambit of SOSMA and that by the express exclusion of para. (e) of art. 149(1) of the Federal Constitution in the preamble of SOSMA, the Parliament, in enacting SOSMA never intended to designate such action described or stipulated therein as security offence. On appeal to the Court of Appeal, the appeal by the prosecution was dismissed. The judgment of the Court of Appeal is very relevant to the present case and I could do no better than reproducing the relevant parts of the judgment:

> [28] Further, we agree with the learned Judge that in determining whether the offence under Section 124L of the Penal Code is a security offence under SOSMA, the proper approach to be adopted is the purposive approach.
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> [32] The intention of Parliament as for the purpose and object of SOSMA can be seen from the following speech of the Minister in the Prime Minister Department during the second and third reading of SOSMA Bill 2012.
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> [33] From the statements by the Minister, it is crystal clear that the purpose and objective of SOSMA is to combat terrorism.
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> [35] At this juncture, it is pertinent to highlight the Minister's speech in tabling SOSMA bill that "setiap Akta yang digubal di bawah Pekeliling 149 hendaklah diperincikan tindakan yang telah diambil itu". Indeed, there are specific actions enumerated in Article 149(1) of the Federal Constitution and SOSMA had adopted or recited only some of the actions. Taking the Minister's speech, every Act of Parliament or law enacted under Article 149 must stipulate specifically the action that has been taken by the body of persons, which necessitate, the promulgation of such case.
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> [36] To reiterate, the preamble of SOSMA recites the action under paragraphs (a), (b), (d) and (f) of clause (1) of Article 149 and not the action under paragraphs (c) and (e) of clause (1) of Article 149 of the Federal Constitution. Whilst we found no ambiguity that SOSMA was enacted under Article 149(1)(a), (b), (d) and (f) of the Federal Constitution, we found ambiguity whether the charge against the

respondent under Section 124L of the Penal Code was intended by Parliament to be categorised as security offence under Article 149(1) of the Federal Constitution.

[37] The ambiguity arises from the fact that the offence created by Section 124L of the Penal Code involves an action which falls under paragraph (e) of clause (1) of Article 149 and paragraph (e) has been expressly excluded from the preamble of SOSMA.

[38] The incorporation or presence of Section 124L in the First Schedule of SOSMA must not be looked in isolation. Notwithstanding Section 124L being listed in the First Schedule of SOSMA, regard must be given to the overall scope, purpose and object of SOSMA. In our judgment, the inclusion of Section 124L in the First Schedule does little to clarify the ambiguity as Section 124L cannot change the scope, purpose and object of the enactment of SOSMA. SOSMA being a law which prescribes limitation on the liberty clause, must be construed religiously and any ambiguity must be resolved in favour of the respondent.

[16] Hence, notwithstanding the fact that offences under Part IIIA of ATIPSOM under which s. 26E was enacted, has been listed as security offence under the First Schedule of SOSMA, it does not provide a blanket provision approval/categorically that all offences thereunder must be treated/considered/defined as security offence under the said Act. It is open to the defence to challenge whether any particular offence under the particular section under the First Schedule qualified to be considered as security offence for the purpose of a trial under SOSMA. At the same time, it is incumbent upon the court to determine whether that particular offence falls under the ambit of SOSMA.

[17] Back to our present case, the next important issue to be determined is whether an offence under s. 26E of ATIPSOM is a security offence for the purpose of SOSMA. At the risk of being repetitive, it is to be emphasised that SOSMA is enacted to combat terrorism while there is no ambiguity that SOSMA was enacted under art. 149(1)(a), (b), (d) and (f) of the Federal Constitution, there is ambiguity whether s. 26E of ATIPSOM was intended by the Parliament to be categorised as security offence under art. 149(1) of the Federal Constitution. In this regard, I respectfully adopt the approach that had been approved by the Court of Appeal in *Khairuddin* case ie, to determine whether the offence under s. 26E of ATIPSOM falls under any of the acts found in the recital of SOSMA.

[18] Put it in another way, the relevant question to be asked is whether the act of making fraudulent Malaysian passport may be categorised as an act:

(i) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or

(ii) to excite disaffection against the Yang di-Pertuan Agong; or

(iii) which is prejudicial to public order in, or the security of, the Federation or any part thereof; or

(iv) to procure the alteration, otherwise than by lawful means, of anything by law established.

[19] Obviously the offence complained of do not fall under paras. 4(1), (2) and (4) of the recital. The relevant question here is whether the offence can be categorised as an act which is prejudicial to the public order or the security of the Federation. While it may not be difficult to define the word "security", the High Court's decision in the case of *Re Application Of Tan Boon Liat @ Allen; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [1976] 1 LNS 126; [1967] 2 MLJ 83 where Eusuffee Abdoolcader J (as he then was):

> 'Public order' means the tranquillity and security which every person feels under the protection of the law, a breach of which is an invasion of the protection which the law affords (*Board of Commissioners of Peace Officers Annuity and Benefit Fund v. Clay* 102 SE 2d 575 @ 577). The American view on 'public order' was well expressed in *Cartewall v. Connecticut* (1940) 310 US 296 @ 308 (at p. 308) thus:
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> > The offence known as breach of the peace embraces a great variety of conduct, destroying or menacing public order and tranquillity. It includes not only violent acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot … when clear and present danger of riot, disorder, interference with traffic upon public streets or other immediate threat to public safety, peace or order appears, the power of the State to prevent or punish is obvious.
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> The learned Judge continues:
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> The expression 'public order' is not defined anywhere but danger to human life and safety and the disturbance of public tranquillity must necessarily fall within the purview of the expression. It is used in a generic sense and is not necessarily antithetical to disorder, and is wide enough to include considerations of public safety within its signification. The Supreme Court of India exhaustively discussed the import of the term 'public order' in *Romesh Thappar v. State of Madras* AIR 1950 SC 124 (in particular at page 127) when it established the principle that the maintenance of public order is equated with the maintenance of public tranquillity, that 'public safety' is a part of the wider concept of 'public order', that 'public safety' ordinarily means security of the public or their freedom from danger and in that sense will include the securing of public health, that is to say, anything which tends to prevent dangers to the public health may also be regarded as securing public safety.

[20] Before moving further, it must be noted that in the course of his submission, learned counsel for the accused submitted that the learned Deputy Public Prosecutor has confirmed that the fraudulent passports, the subject matter of the charges against the accused, were issued to Malaysians. The learned Deputy Public Prosecutor did not dispute this fact, hence the holder of these passports are Malaysian citizen.

[21] As such, can the act of the accused in making those passports be considered as prejudicial to public order? With due respect, I do not think so. How could the issuance of the passport to Malaysian citizen tantamount to be a threat to public order. As submitted by learned counsel for the accused "one cannot smuggle Malaysian migrant into Malaysia by issuing Malaysian passport because they are surely not "migrant". If I may add the definition of "smuggling of migrant" under s. 2 of ATIPSOM involved an element of "unlawful entry" into or through or unlawful exit from any country of which the person is not a citizen or permanent resident. Having being issued a travel document, *albeit* fraudulently, will not make a Malaysian citizen a smuggled migrant under ATIPSOM.

[22] In my opinion, the offence purportedly committed by the accused under s. 26E is an act which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the federation or any part thereof ie, which falls under art. 149(1)(e) of the Federal Constitution. As I have stated earlier in this decision, this paragraph has been expressly excluded in the recital of SOSMA which necessarily mean that this offence is not intended to be categorised as security offence. Hence, in answer to question (a) in this notice of motion, I rule that the 12 charges preferred against the accused came within the scope of art. 149(1)(e) of the Federal Constitution and should not be treated as security offence.

[23] Consequently, I order that the charges against the accused should be tried in the Sessions Court and that the accused has the right to be released on bail. I order that the accused be produced before the Sessions Court at 10.30am. Bail application is to be dealt with by the Sessions Court. All charges in the High Court be struck out and the accused be discharged and not amounting to acquittal on those charges.

[24] Be that as it may, I would refrain myself from making any ruling on the constitutionality of ss. 13 and 30 of SOSMA. It must be noted that the definition of security cases under s. 3 of SOSMA and its First Schedule covers a variety of offences under Chapter VI, VIA and VIB of the Penal Code as well as under Part IIIA of SOSMA and Special Measures against Terrorism in Foreign Country Act 2015. As I have also stated earlier, art. 149(1) empowers the Legislature to enact law for the purpose specified under art. 149(1)(a) to (f) notwithstanding that it is inconsistent with arts. 5,

A 9, 10 and 13 of the Federal Constitution. As such, if any of the other offences listed under the First Schedule fall under any of the recital of SOSMA, then such offences shall be considered as security offences and s. 13 thereof should apply to the accused. Since the present notice of motion makes specific reference to the offence under s. 26E, I am of the opinion that
B it would be inappropriate for me to make a general ruling on the constitutionality of ss. 13 and 30 without making any reference to the individual offence provided therein.

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